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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/316,515	05/21/1999	DAVID B. KRIG	279.112US1	7896	
75	590 02/12/2003				
SCHWEGMAN LUNDBERG WOESSNER AND KLUTH PA			EXAMINER		
P O BOX 2938		EVANISKO, GEORGE ROBERT			
MINNEAPOLI	S, MN 55402				
			ART UNIT	PAPER NUMBER	
			3762		
			DATE MAILED: 02/12/2003		

Please find below and/or attached an Office communication concerning this application or proceeding.

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		Application No.	Applicant(s)	ועון			
à		09/316,515	KRIG ET AL.				
~	Office Action Summary	Examiner	Art Unit				
		George R Evanisko	3762				
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply							
T - -	A SHORTENED STATUTORY PERIOD FOR REPLY THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication. If the period for reply specified above is less than thirty (30) days, a reply If NO period for reply is specified above, the maximum statutory period of Failure to reply within the set or extended period for reply will, by statute Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	36(a). In no event, however, may a y within the statutory minimum of thi vill apply and will expire SIX (6) MO , cause the application to become A	reply be timely filed  rty (30) days will be considered time  NTHS from the mailing date of this of  BANDONED (35 U.S.C. § 133).				
1	)⊠ Responsive to communication(s) filed on <u>16 L</u>	December 2002 .					
2a	) This action is <b>FINAL</b> . 2b)⊠ Th	is action is non-final.					
	) Since this application is in condition for alloward closed in accordance with the practice under osition of Claims			ne merits is			
4	) Claim(s) $\underline{1-91}$ is/are pending in the application	l.					
	4a) Of the above claim(s) is/are withdraw	wn from consideration.					
5	5) Claim(s) 55-57 and 90 is/are allowed.						
6	6)⊠ Claim(s) <u>1-54,58-89 and 91</u> is/are rejected.						
7	) Claim(s) is/are objected to.						
	Claim(s) are subject to restriction and/o	r election requirement.					
• •	ication Papers						
	) The specification is objected to by the Examine						
10	) The drawing(s) filed on is/are: a) accep	•					
44	Applicant may not request that any objection to the The proposed drawing correction filed on			.or			
11	If approved, corrected drawings are required in rep		isapproved by the Examin	ler.			
12	The oath or declaration is objected to by the Ex						
	ity under 35 U.S.C. §§ 119 and 120						
	Acknowledgment is made of a claim for foreign	nriority under 35 U.S.C.	8 119(a)-(d) or (f)				
10	a) ☐ All b) ☐ Some * c) ☐ None of:	priority and or or orono.	3 1 10(4) (4) 01 (1).				
	1. Certified copies of the priority documents	s have been received.					
	2. Certified copies of the priority documents		Application No.				
	Copies of the certified copies of the prior application from the International But     See the attached detailed Office action for a list.	rity documents have beer reau (PCT Rule 17.2(a)).	received in this National	Stage			
14)	14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).						
,	<ul> <li>a)          The translation of the foreign language pro     </li> <li>Acknowledgment is made of a claim for domesting the companion of the foreign language pro</li> </ul>	visional application has b	peen received.				
	oment(s)						
2) 🗌	Notice of References Cited (PTO-892) Notice of Draftsperson's Patent Drawing Review (PTO-948) Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>25</u>	5) Notice of	Summary (PTO-413) Paper No Informal Patent Application (PT				

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### **DETAILED ACTION**

### Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/16/02 has been entered.

### **Specification**

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification does not state that the first indicated pacing interval is calculated by "averaging a most recent V-V interval duration with a stored previously-computed value of the first indicated pacing interval". The only place where "averager" is mentioned is on page 12 of the specification.

# Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-54, 58-89 and 91 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The subject matter which was not described in the specification is the

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use of calculating the first indicated pacing interval by "averaging a most recent V-V interval duration with a stored previously-computed value of the first indicated pacing interval". The written specification does not discuss how the average is performed between the V-V interval and the previous value of the indicated pacing interval or how the weights are applied to the average. Although, the specification does disclose the use of a sum of the V-V interval and the previous indicated pacing interval.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6-22, 33-49, 60, 61, and 71-87 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 6, 8, 12, 15, 33, 35, 39, 42, 60, 71, 73, 77, and 80, the claims are vague since the independent claim has the first indicated interval being calculated using an average, but these dependent claims have the value calculated using an average.

## Allowable Subject Matter

Claims 55-57 and 90 are allowed.

## Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

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### Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R Evanisko whose telephone number is 703 308-2612. The examiner can normally be reached on M-F 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 703 308-5181. The fax phone numbers for the organization where this application or proceeding is assigned are 703 306-4520 for regular communications and 703 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1148.

George R Evanisko Primary Examiner Art Unit 3762 2/7/3

GRE February 7, 2003